IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 21 OF 2006

IN

SECOND APPEAL NO. 100 OF 2004

SHRI REGINALDO D'SOUZA ....Applicant

Versus

ST. ANTHONY'S CHAPEL THROUGH ITS PRESIDENT ....Respondent

Mr. C. A Coutinho, Advocate for the Applicant/Original Respondent.
Shri A.F. Diniz, Advocate for the Original Appellant.

Coram:- R.M.S. KHANDEPARKAR, J.

Date:- 10th February, 2006

P.C.:

By the present application, the applicant seeks leave of the Court to permit him to represent the Chapel/Respondent in the present proceedings. The same is objected to by the appellant as well as by the respondent represented by Mrs. Therezina Fernandes.

2. Undisputedly the suit was filed in representative capacity for the benefit of the Chapel in the village. The very cause title discloses that the villagers had formed an Association which was not registered and they claimed to have right to the land in question and had filed a suit against the appellant herein. Undisputedly, after filing of the Second Appeal, Antonio D'Souza who was earlier allowed to represent the respondent/plaintiff in the suit, expired. On his death an application came to be filed by the appellant herein being Misc. Civil Application No.562/05 seeking leave of the Court to substitute Terezina Fernandes as

she was then the Vice President of the said unregistered Association. Accordingly vide Order dated 7th October, 2005 she was allowed to represent the respondent.

3. While contending that in the subsequent meeting alleged to have been held on 18th December, 2005 the applicant Reginaldo D'Souza claims to have been elected as President of the unregistered Association and on that basis he has filed the present application seeking leave to defend on behalf of the respondent. The same as mentioned above is objected to by the respondent on record. Nonetheless the fact remains the suit was filed in representative capacity and if the applicant prima fcie is able to show that there is some conflict of interest between the party already on record or that there is apprehension in the mind of the applicant for valid reasons that the appeal may not be effectively defended, certainly the applicant would be entitled to be joined as party to the proceedings.

4. The documents in the form of meeting of the villagers filed along with the application, though some of the signatures thereunder are disputed by the appellant, disclose doubt in the mind of the villagers that the respondent already on record may not effectively defend the case of the Chapel in the appeal. Being so, in my considered opinion an opportunity should be given to the applicant along with the respondent already on record to defend the appeal. Joinder of the applicant to the appeal, in the facts and circumstances of the case which disclose that the appeal arises from a suit which was filed in representative capacity will not cause any prejudice to the appellant. Besides that the presence of the applicant may help the Court in arriving at just and appropriate decision in the matter.

5. Accordingly the applicant is directed to be joined as respondent No.2 in the appeal. Amendment to the cause title to be carried out within seven days. Application accordingly stands disposed of.

R.M.S. KHANDEPARKAR, J.

sl.